

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

HENRY J. PRIMERANO,

Plaintiff,

-VS-

ATTORNEY'S AFFIDAVIT
IN RESPONSE TO
PLAINTIFF'S MOTION

Index No.: 07 CV 0151 C(HBS)

COLIN W. NEVILLE,

Defendant.

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:
CITY OF BUFFALO)

JODY E. BRIANDI, ESQ., being duly sworn, deposes and says:

1. I am an attorney duly licensed in the State of New York and am an associate of the law firm Hurwitz & Fine, P.C., attorneys for defendant, COLIN W. NEVILLE, in the above-entitled matter. As such, I am fully familiar with the facts and circumstances set forth herein.

2. This Affidavit is submitted response to plaintiff's motion for an Order to remand the above action to State of New York, Niagara County Supreme Court, under Index Number 128295.

3. Plaintiff has agreed to a cap on the total amount of damages recoverable in this case in the amount of Seventy Thousand (\$70,000.00) Dollars, and has executed a Stipulation of Damages to that effect. A copy of the Stipulation of Damages is attached hereto as **Exhibit A**. The Stipulation is being submitted to Magistrate Judge Hugh B. Scott for execution and filing.

4. Based on the agreement reached with counsel and upon the above Stipulation of Damages executed, Defendant does not oppose plaintiff's motion to remand the case.

WHEREFORE, it is respectfully requested that this Court issue an Order in accordance with plaintiff's request for relief, and for such other and further relief as this Court deems just and proper.

/s/ Jody E. Briandi

Jody E. Briandi, Esq.

Subscribed and sworn to before me
this 21st day of June, 2007.

/s/ Connie Benn

Notary Public